

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423**

**ENVIRONMENTAL ASSESSMENT**

**Docket No. AB 290 (Sub-No. 354X)**

**The Cincinnati, New Orleans and Texas Pacific Railway Company—Discontinuance of  
Service Exemption—in Scott County, Tenn.**

**BACKGROUND**

In this proceeding, The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP), a wholly owned subsidiary of Norfolk Southern Railway Company, filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the discontinuance of common carrier service over a line of railroad in Scott County, Tennessee. The rail line proposed for discontinuance extends approximately 3.09 miles from milepost NR 215.61 near Helenwood, Tennessee to milepost NR 218.7 near New River, Tennessee (the Line). A map depicting the Line in relationship to the area served is appended to this Environmental Assessment.

If discontinuance authority is granted in this proceeding, CNOTP would no longer provide rail service over the Line. The physical properties of the Line, including track and associated structures, are owned by the City of Cincinnati, Ohio through an instrumentality known as Cincinnati Southern Railway (CSR). CSR is not a corporation and is not a common carrier subject to Board regulation. CNOTP understands that CSR intends to sell the Line to KT Group, LLC (KTG), who CNOTP understands intends to salvage the track. Because CSR is not a rail carrier subject to Board regulation, CSR is not required to seek Board approval before salvaging or selling the Line. Therefore, should the Surface Transportation Board (the Board) approve the proposed discontinuance, the Line would no longer be subject to environmental review by the Board in the event of salvage or disposition of the rail right-of-way.

The Line is a portion of a rail line that was the subject of a 2007 abandonment proceeding in Docket No. AB 290 (Sub-No. 279X). CNOTP subsequently withdrew its petition for abandonment in that proceeding noting that, because CNOTP is not the owner of the track and its associated structures, CNOTP does not have the authority to undertake abandonment. In this proceeding, CNOTP proposes to discontinue service over the Line rather than to abandon the Line.

## **ENVIRONMENTAL REVIEW**

CNOTP submitted an Environmental Report that concludes the quality of the human environment would not be affected significantly as a result of the discontinuance or any post-discontinuance activities. CNOTP served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Board's environmental rules [49 C.F.R. § 1105.7(b)].<sup>1</sup> The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

In rail line abandonments, OEA assesses the environmental impacts of salvage of the rail line and diversion of train traffic to other modes that exceed the thresholds set forth in the Board's environmental rules. Also under the Board's environmental rules at 49 C.F.R. 1106.b(3), discontinuances of service normally require the preparation of an Environmental Assessment. However, where the owner of the rail assets—the tracks, ties, and other appurtenances—is a carrier who would need to seek abandonment authority from the Board at a later time, the Board typically does not consider environmental review to be necessary.

In cases where the owner of the rail line proposed for discontinuance is not a rail carrier, such as is the case here, there would be no subsequent abandonment filing with the Board and, therefore, no opportunity for environmental review by the Board before salvage could occur. Because there will be no future opportunity to conduct an environmental review of the potential environmental impacts that could occur as a result of the salvage of the Line, OEA has prepared this EA to consider those impacts. Because the owner of the rail right-of-way, CSR, is not a rail carrier subject to Board regulation, OEA may not recommend, and the Board may not impose, environmental mitigating conditions on CSR in this proceeding.

### ***Diversion of Traffic***

CNOTP states that no local traffic or overhead traffic has moved over the Line for at least two years. Accordingly, the proposed discontinuance would not adversely impact the development, use and transportation of energy resources or of recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

### ***Salvage Activities***

Because CNOTP does not own the rail right-of-way or any of the physical properties of the Line, CNOTP cannot conduct any salvage activity as a result of the proposed discontinuance. CNOTP states that, to the best of its knowledge, the owner of the Line, CSR intends to sell the Line to KTG, who will conduct salvage. CNOTP states that, to the best of its knowledge, KT intends to salvage the rail from the Line, but does not intend to remove the rail ties. Because neither CSR nor KTG is a rail carrier subject to Board regulation, these entities would not be required to obtain authority from the Board prior to disposing of or salvaging the Line. Nor does

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<sup>1</sup> The Environmental and Historic Reports are available for viewing on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov) by going to "E-Library," selecting "Filings," and then conducting a search for AB 290 (Sub-No. 354X).

the Board have the authority to impose conditions on the salvage activities that KTG could conduct should the discontinuance be approved and should CSR sell the Line to KTG.

Impacts from salvage of a rail line typically include the removal of tracks and ties and may include the removal of ballast, dismantling of any bridges or other structures in the rail right-of-way, and regrading of the right-of-way. In this EA, OEA assumes that salvage activity would include the removal of track using the existing rail right-of-way and would not include any regrading of the right-of-way or the removal of any structures. The assumption is based on the information provided by CNOTP in its Environmental and Historic Report.

### *Land Use*

CNOTP has requested comments in this proceeding from Scott County regarding the implications of the proposed discontinuance for existing local land use plans, but has not received comments on the current proceeding. Scott County did, however, submit comments on the 2007 abandonment proceeding, in which Scott County expresses opposition to the proposed abandonment on the grounds that the long range plans of Scott County include the reopening of the railroad to serve coal, timber, and recreational businesses in the area. In its comments on the 2007 abandonment, Scott County does not identify any potential environmental impacts that could occur as a result of salvage. Accordingly, OEA does not recommend any mitigation regarding the consistency of the proposed discontinuance with local land use plans.

CNOTP has requested comments from the Natural Resources Conservation Service (NRCS) regarding potential impacts of the proposed discontinuance, but has not received comments from NRCS on the current proceeding. Scott County did, however, submit comments on the 2007 abandonment proceeding, in which NRCS states that the project would have no effect on agricultural land, including prime farmland. Because CNOTP would not conduct any salvage activity related to the proposed discontinuance and because any salvage activity that would occur subsequent to the discontinuance would be limited in scope and confined to the existing rail right-of-way, OEA concludes that the proposed discontinuance would not affect agricultural land. Accordingly, no mitigation regarding the conservation of agricultural land is necessary.

CNOTP has requested comments from the National Geodetic Survey (NGS) regarding potential impacts of the proposed discontinuance on NGS activities and projects, but has received no response from NGS on the current proceeding. NGS did, however, submit comments on the 2007 abandonment proceeding, in which NGS states that two geodetic station markers could be affected by salvage activities. Because CNOTP would not conduct any salvage activities as a result of the proposed discontinuance, and because the Board cannot impose any conditions on the CSR, the owner of the Line, OEA is not recommending any mitigation regarding the potential impact to any affected geodetic station markers. OEA is providing of this EA to NGS to notify them of the proposed discontinuance and to invite their review and comment.

CNOTP states, and OEA review has confirmed, that the Line is not located within a designated coastal zone. Accordingly, no mitigation regarding coastal zone management is necessary.

## *Water Resources*

Based on OEA's review of available geospatial data, the Line crosses one small stream, but does not cross any other waterbodies or wetlands.<sup>2</sup> CNOTP has requested comments from the Tennessee Department of Environment and Conservation (TDEC), the U.S. Environmental Protection Agency (USEPA) and the U.S. Army Corps of Engineers (the Corps) regarding potential impacts of the proposed discontinuance on waterways and wetlands. CNOTP has not received comments from these agencies on the current proceeding. USEPA and the Corps did, however, submit comments on the 2007 abandonment proceeding. In its comments on the 2007 abandonment proceeding, USEPA states that the project would not require a National Pollutant Elimination System permit under Section 402 of the Clean Water Act (33 U.S.C. § 1251). In its comments on the 2007 abandonment, the Corps states that the project would not require a Corps permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344).

Because CNOTP would not conduct any salvage activities as part of the proposed discontinuance and because any salvage activities that would be conducted subsequent to the discontinuance would be limited in scope and confined to the existing rail right-of-way, OEA concludes that the proposed discontinuance would not impact water resources. Accordingly, no mitigation regarding water resources is necessary.

## *Hazardous Materials*

CNOTP states that no known hazardous waste sites or spill exist within or adjacent to the rail right-of-way. OEA's review has confirmed that there are no federally listed Superfund sites in the vicinity of the Line.<sup>3</sup> Accordingly, no mitigation regarding hazardous materials is necessary.

## *Biological Resources*

CNOTP has requested comments from the U.S. Fish Wildlife Service (USFWS) regarding the potential impact of the proposed discontinuance on threatened and endangered species. To date, USFWS has not provided comments on the proposed discontinuance. USFWS also did not submit comments on the 2007 abandonment proceeding.

OEA conducted a search of the USFWS Information, Planning, and Conservation System in order to identify protected species that may be located near the project area.<sup>4</sup> The table below shows the protected species known or thought to occur within a 100 foot buffer of the Line.

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<sup>2</sup> U.S. Fish and Wildlife Service, National Wetlands Inventory, <http://www.fws.gov/wetlands/Data/Mapper.html> (last visited May 6, 2015).

<sup>3</sup> Environmental Protection Agency, NEPAassist, <http://nepassisttool.epa.gov/nepassist/entry.aspx> (last visited May 6, 2015).

<sup>4</sup> U.S. Fish and Wildlife Service, Information, Planning, and Conservation System, <http://ecos.fws.gov/ipac/> (last visited May 6, 2015).

| Protected species known or thought to exist within or near the project area |                         |                                      |            |
|---|-------------------------|--------------------------------------|------------|
| Group   | Common Name             | Scientific Name                      | Status     |
| Clams   | Cumberland bean         | <i>Villosa trabalis</i>              | Endangered |
|   | Cumberland elktoe       | <i>Alasmidonta atropurpurea</i>      | Endangered |
|   | Cumberlandian combshell | <i>Epioblasma brevidens</i>          | Endangered |
|   | Littlewing pearlymussel | <i>Pegias fabula</i>                 | Endangered |
|   | Oyster mussel           | <i>Epioblasma capsaeformis</i>       | Endangered |
|   | Tan riffleshell         | <i>Epioblasma florentina walkeri</i> | Endangered |
| Fishes  | Blackside dace          | <i>Phoxinus cumberlandensis</i>      | Threatened |
|   | Duskytail darter        | <i>Etheostoma percnurum</i>          | Endangered |
| Plants  | Cumberland rosemary     | <i>Conradina verticillata</i>        | Threatened |
|   | Cumberland sandwort     | <i>Arenaria cumberlandensis</i>      | Endangered |
|   | Virginia spiraea        | <i>Spiraea virginiana</i>            | Threatened |
| Mammals   | Indiana bat             | <i>Myotis sodalist</i>               | Endangered |

The Line crosses one stream where the six species of clams and three species of fishes could potentially occur. The three plant species—Cumberland rosemary, Cumberland sandwort, and Virginia spiraea—are typically found along stream banks or on sand islands and also therefore be present near the rail right-of-way. Based on the information available to date, however, any salvage activity that would take place following the discontinuance of the Line would be limited in scope and confined to the existing rail right-of-way. OEA expects that these activities would not result in the discharge of sediment, changes to the stream channel or water flow, or other impacts that could affect aquatic or plant species. The Indiana bat is primarily threatened by disease and habitat disturbance. Because salvage of the Line would not result in disturbance of Indiana bat habitat, OEA concludes that this species would not be affected by the proposed discontinuance.

OEA notes that, based on a search using the USFWS critical habitat mapping tool, the Line does not cross and is not located adjacent to areas containing critical habitat for these or other federally listed threatened or endangered species.<sup>5</sup>

The Tennessee Wildlife Resources Agency (TWRA) submitted comments on the 2007 abandonment proceeding, in which TWRA notes that a state listed threatened fish, the ashy darter (*Etheostoma cinereum*), is known to occur in waterways near the project area. Because any salvage activities that could occur subsequent to the discontinuance would be limited in

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<sup>5</sup> U.S. Fish and Wildlife Service, Critical Habitat Portal, <http://ecos.fws.gov/ipac/> <http://ecos.fws.gov/crithab/> (last visited May 6, 2015).

scope and confined to the existing rail right-of-way, OEA concludes that salvage of the Line would have no effect on the ashy darter or any other state listed protect species.

CNOTP would not conduct any salvage activities as a result of the proposed discontinuance and any salvage that would occur subsequent to the discontinuance would not affect federally or state listed protected species. Accordingly, OEA does not recommend any mitigation regarding the protection of biological resources. OEA is providing a copy of this EA to USFWS and TWRA for review and comment.

### *Air Quality*

OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Accordingly, no mitigation regarding air quality is necessary.

### *Noise*

Noise associated with salvage activities, if any, would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment. Accordingly, no mitigation related to noise impacts is necessary.

### *Summary*

Based on all information available to date, OEA does not believe that the proposed discontinuance would cause significant environmental impacts. OEA is sending a copy of this EA to USFWS, TWRA, and NGS for review and comment.

## **HISTORIC REVIEW**

According to CNOTP and OEA's independent research, the Line is a portion of the Cincinnati Southern Railway, which extends from Cincinnati, Ohio to Chattanooga, Tennessee and is owned by the City of Cincinnati. The Cincinnati Southern Railway was constructed during the years 1873 through 1879 and began operations in 1880. The railroad was leased to CNOTP in 1881. CNOTP came under the control of Southern Railway in 1893, which merged with Norfolk & Western in 1982 to become Norfolk Southern Railway.

In 1963, the segment of the Cincinnati Southern Railway between Helenwood, Tennessee and Robbins, Tennessee was relocated westward as part of a project to improve rail service and safety. The portion of this segment between Helenwood and New River, Tennessee was retained in place in order to permit continued access to the Brimstone Railroad, which extends between New River and Sterling, Tennessee. According to CNOTP, no traffic has moved over the Line in many years. There are no bridges or other structures on the Line.

CNOTP served the Historic Report, including topographic maps of APE, on the Tennessee Historical Commission (State Historic Preservation Officer or SHPO), pursuant to 49 C.F.R. § 1105.8(c). To date, the SHPO has not provided written comments. However, in a

phone conversation with OEA on May 4, 2015, SHPO staff indicated that non historic properties listed in or eligible for listing in the National Register of Historic Places (National Register) would be affected by the proposed discontinuance. In its comments on the 2007 abandonment proceeding, the SHPO states that salvage and disposition of the right-of-way would not affect any historic properties listed in or eligible for listing in the National Register. OEA has reviewed the available information in this proceeding and concurs with the SHPO's comments.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, we have determined that no known historic properties listed in or eligible for inclusion in the National Register would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad's Historic Report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov).

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the National Park Service Native American Consultation Database to identify federally-recognized tribes that may have ancestral connections to the project area.<sup>6</sup> The search indicated that the Eastern Band of Cherokee Indians of North Carolina may have knowledge regarding properties of religious and cultural significance within the right-of-way of the proposed discontinuance. Accordingly, OEA is sending a copy of this EA to that tribe for review and comment.

## **CONDITIONS**

CNOTP does not own the rail line proposed for discontinuance and does not have authority to conduct salvage following discontinuance. Because the owner of the rail right-of-way, CSR, is not a rail carrier subject to Board regulation, OEA may not recommend, and the Board may not impose, environmental mitigating conditions on CSR in this proceeding. Accordingly, OEA is not recommending any conditions to mitigate the potential environmental impacts of the proposed discontinuance.

## **CONCLUSIONS**

Based on the information provided from all sources to date, OEA concludes that discontinuance of rail service on the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

The alternative to the proposed discontinuance would be denial of the notice of exemption, which would result in no change to operations and no effects to the existing quality of the human environment.

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<sup>6</sup> National Park Service, National NAGPRA Program Native American Consultation Database, <http://grants.cr.nps.gov/nacd/index.cfm> (last visited May 6, 2015).

## **PUBLIC ASSISTANCE**

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding the Board's discontinuance process. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

## **COMMENTS**

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Joshua Wayland, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, [www.stb.dot.gov](http://www.stb.dot.gov), by clicking on the "E-FILING" link. **Please refer to Docket No. AB 290 (Sub-No. 354X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Joshua Wayland, the environmental contact for this case, by phone at (202) 245-0330, fax at (202) 245-0454, or e-mail at [waylandj@stb.dot.gov](mailto:waylandj@stb.dot.gov).

Date made available to the public: May 8, 2015

**Comment due date: May 22, 2015**

By the Board, Victoria Rutson, Director, Office of Environmental Analysis